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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR                     | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|--|---------------------|------------------|
| 09/202,104   | 04/30/1999  | LEONARDUS ADRIANUS MARIA VAN<br>LEENGOED | 3890US              | 2481             |
| 24247  | 7590        | 07/15/2005                               | EXAMINER            |                  |
| TRASK BRITT<br>P.O. BOX 2550<br>SALT LAKE CITY, UT 84110 |             |  | LANDSMAN, ROBERT S  |                  |
|  |             |  | ART UNIT            | PAPER NUMBER     |
|  |             |  | 1647                |                  |

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/202,104

Applicant(s)

VAN LEENGOED ET AL.

Examiner

Robert Landsman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8-12,15,19,21,47,72,73,75-80 and 82-85 is/are pending in the application.
- 4a) Of the above claim(s) 10,19,47,73,76,77,79,80 and 82-85 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8,9,11,12,15,21,72,75 and 78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

5.00

## **DETAILED ACTION**

This Office Action is identical to that mailed 9/24/04. However, upon discussion with Applicant's representative, Dr. G. Scott Dorland, it was concluded that claim 4 should have been included in a separate new matter rejection since the claim recites 12-20 amino acids. There is no support for this exact limitation. The rejection is seen below.

### ***1. Formal Matters***

- A. The Amendment dated 7/12/04 has been entered into the record.
- B. Claims 1, 4, 5, 8, 9, 11, 12, 15, 72, 75 and 78 are pending and are the subject of this Office Action.
- C. All Statutes under 35 USC not found in this Office Action can be found, cited in full, in a previous Office Action.

### ***2. Claim Objections***

- A. The objection of claim 1 has been withdrawn in view of Applicants' amendment to the claim.
- B. The syntax of claim 5 could be improved by adding the word "consisting" after "claim 1."
- C. The syntax of claim 8 could be improved by replacing the term ", wherein" with "comprising" and adding the term "which" after "claim 1."
- D. The syntax of claim 11 could be improved by amending the claim to recite "A [The] peptide...of claim 1 [8] comprising...peptides which are linked..."

### ***3. Claim Rejections - 35 USC § 112, first paragraph – new matter***

- A. All rejections under 35 USC 112, first paragraph, have been withdrawn in view of Applicants' amendments to the claims.

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B. Claims 1, 4, 5, 8, 9, 11, 12, 15, 72, 75 and 78 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "at least 12." No support for this limitation can be found in the specification. The original claims recite "at least 5" and "5-20." However, the original claims do not recite SEQ ID NO:12. Furthermore, SEQ ID NO:12 is 26 residues and the original claims only recite up to "20."

C. **Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites "12-20" amino acids. No support for this limitation can be found in the specification. The original claims recite "at least 5" and "5-20." However, the original claims do not recite SEQ ID NO:12. Furthermore, SEQ ID NO:12 is 26 residues and the original claims only recite up to "20."

***4. Claim Rejections - 35 USC § 112, second paragraph***

A. All rejections under 35 USC 112, second paragraph, have been withdrawn in view of Applicants' amendments to, or cancellation of, the claims. However, new rejections appear below.

B. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: a purpose for culturing the cells in a medium comprising a peptide of claim 1. The specification does not disclose a method of simply culturing cells, only assay methods using the peptides of claim 1.

C. Claims 8, 9, 11 and 72 are confusing. Claim 8 recites a "peptide composition." However, it appears that peptides are the only material in the "composition." It is believed that the claims should recite "a peptide compound," or "a peptide conjugate."

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**5. Conclusion**

A. No claim is allowable.


***Advisory information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Landsman whose telephone number is (571) 272-0888. The examiner can normally be reached on M-Th 10 AM – 7 PM (eastern); alt F 10 AM – 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Landsman  
Primary Examiner  
Art Unit 1647

  
ROBERT S. LANDSMAN, PH.D  
PRIMARY EXAMINER